

I. PRETRIAL MOTIONS

A. NCR's Motion for Summary Judgment of Noninfringement (ECF No. 64)

DENIED.

B. NCR's Motion for Summary Judgment of Invalidity (ECF No. 66)

DENIED.

C. NCR's Motion to Exclude the Opinions and Testimony of Mr. Gregory C. Crouse (ECF No. 68)

GRANTED-IN-PART and DENIED-IN-PART.

NCR's motion is GRANTED with respect to Mr. Crouse's apportionment analysis, MOOTED as to his conveyed sales analysis, and DENIED as to the remainder.

D. CoC's Motion to Exclude the Opinions and Testimony of Sandeep Chatterjee (ECF No. 70)

DENIED.

E. CoC's *Daubert* Motion to Exclude the Damages Opinions and Testimony of Dr. Devrim Ikizler (ECF No. 89)

GRANTED-IN-PART and DENIED-IN-PART.

CoC's motion is GRANTED with respect to Dr. Ikizler's market value approach and patent-based apportionment approach, and is DENIED as to the design around approach and the feature-based apportionment approach.

F. NCR's Motion to Exclude the Opinions and Testimony of Ambreen Salters (ECF No. 97)

DENIED. However, Ms. Salters shall not rely on any part of Mr. Crouse's opinions that have been excluded by the Court.

II. MOTIONS IN LIMINE

It is **ORDERED** that the Parties, their witnesses, and counsel shall not raise, discuss, or argue the following before the venire panel or the jury without prior leave of the Court:

A. Plaintiff CoC's Motions *in Limine* (ECF No. 91)

1. Plaintiff's MIL 1: References to CoC as a Non-Practicing Entity and Patent Troll

GRANTED. The Court will not allow describing CoC as a "patent troll." However, NCR may characterize CoC as a non-practicing entity if there is a legitimate reason to do so.

2. Plaintiff's MIL 2: Disparaging Remarks or Arguments Implying that It Is Improper to Assert Patents Without Practicing Them

GRANTED.

3. Plaintiff's MIL 3: References to Prior Litigations Involving CoC Witnesses

GRANTED.

4. Plaintiff's MIL 4: References to Notice Letters Sent to Third Parties Other than NCR

GRANTED.

5. Plaintiff's MIL 5: References to Any Prior Art and Any Theory of Invalidity Not Set Forth in NCR's Final Invalidity Contentions as Narrowed

GRANTED.

6. Plaintiff's MIL 6: Comparison of the Accused Products to Prior Art

GRANTED.

7. Plaintiff's MIL 7: References to Forum Shopping, Litigation Abuse, or the Western District of Texas as a Popular Venue for Patent Litigation or as an Improper Venue

GRANTED.

8. Plaintiff's MIL 8: References to NCR's 414 Patents

DENIED.

9. Plaintiff's MIL 9: References to the Summer Intern Weights Document and Any Analysis Contained Therein

GRANTED.

10. Plaintiff's MIL 10: References to Allegations that Individual Claim Elements Were in the Prior Art

GRANTED.

11. Plaintiff's MIL 11: Disparaging References to the PTO and its Examiners

GRANTED.

12. Plaintiff's MIL 12: References to Evidence or Argument that Is Inconsistent with the Court's Claim Constructions

GRANTED.

13. Plaintiff's MIL 13: References to Chatterjee's Untimely Opinions

GRANTED.

14. Plaintiff's MIL 14: References to CoC's Attorney Fee Agreements

GRANTED.

B. Defendant NCR's First Set of Motions *in Limine* (ECF No. 95)

1. Defendant's MIL 1: No Argument, Evidence, or Questions Concerning Presence or Absence of Party's Employees/Executives, e.g., Absent Witnesses or Top Executives

GRANTED.

2. Defendant's MIL 2: No Argument, Evidence, or Questions Concerning Any Allegation NCR Does Not Respect Intellectual Property Generally

GRANTED.

3. Defendant's MIL 3: No Argument, Evidence, or Questions Concerning Any Allegation that NCR Copied CoC's Patented Inventions

GRANTED.

4. Defendant's MIL 4: No Argument, Evidence, or Questions as to Comparisons of Burden of Proof Standards to Other Areas of the Law

GRANTED.

5. Defendant's MIL 5: No Argument, Evidence, or Questions Concerning NCR's Overall Economic Status, Total Revenue/Profits, Revenue /Profits Not Connected to Accused Systems, Total Company Cash, or Ability to Pay for a License

GRANTED.

6. Defendant's MIL 6: No Argument, Evidence, or Questions Regarding the Parties' Relative Size, Financial Position, or Sophistication

GRANTED.

7. Defendant's MIL 7: No Argument, Evidence, or Questions Suggesting a Party's Corporate Representative at Trial Is Obligated to Prepare on Any Particular Topic or Is Charged with the Knowledge of Others within the Company

GRANTED.

8. Defendant's MIL 8: No Extraneous Statement During Closing That Is Unrelated to The Evidence Presented or A Disputed Issue That Is Designed Primarily to Illicit an Emotional Juror Response

GRANTED.

9. Defendant's MIL 9: Any Testimony Not Provided in Deposition Due to A Claim of Attorney Client or Work Product Privilege

GRANTED.

10. Defendant's MIL 10: Any Corporate Testimony That CoC Objected to Providing, Refused to Provide, Or Could Not Provide During Deposition

GRANTED.

C. Defendant NCR's Second Set of Motions *in Limine* (ECF No. 96)

1. Defendant's MIL 1: Any Expert Opinions Not Contained in The Expert's Respective Expert Report(s)

GRANTED.

2. Defendant's MIL 2: No Expert Witness Testimony from Individuals Other Than Those Expert Witnesses Who Have Been Properly Designated and Admitted as Such at Trial

GRANTED.

3. Defendant's MIL 3: No Argument, Evidence or Questions to issues to be decided by the Court, such as injunction/post-trial damages, exceptional case/enhanced damages, attorneys' fees, or post and pre-trial interest

GRANTED.

4. Defendant's MIL 4: No Argument, Evidence or Questions relating to any Court rulings on evidence or motions in limine. This motion in limine does not preclude a party from making objections based on the Court's rulings on evidence or motions in limine

GRANTED.

5. Defendant's MIL 5: No Argument, Evidence or Questions argument regarding the costs incurred in prosecution or defense of this lawsuit, except that expert witnesses may be questioned about compensation

GRANTED.

6. Defendant's MIL 6: No Argument, Evidence or Questions relating to jury consultants, shadow juries, or focus groups before or during trial

GRANTED.

7. Defendant's MIL 7: No Argument, Evidence or Questions that NCR had a duty to investigate the patents-in-suit or possible infringement

DENIED.

8. Defendant's MIL 8: No Argument, Evidence or Question that NCR did or did not obtain and/or produce an opinion of counsel

GRANTED.

9. Defendant's MIL 9: No Argument, Evidence or Question that relates to or invokes claim construction issues or otherwise undermines or collaterally attacks the Court's claim constructions, including, for example, presenting arguments or opinions inconsistent with the Court's claim constructions, but the parties may inform the jury of the definitions adopted by this Court

GRANTED.

10. Defendant's MIL 10: No Argument, Evidence or Questions relating to any discovery disputes or alleged failure by any party to produce information during discovery, including any suggestion that the parties have not engaged in good faith discovery or reference to the assertion of objections or the assertion of privileges that occurred pre-trial or during discovery

GRANTED.

11. Defendant's MIL11: No Argument, Evidence or Questions that Plaintiff Notified NCR of the '012 Patent Prior to this Suit

DENIED.

12. Defendant's MIL 12: No Argument, Evidence or Questions Regarding Indirect Infringement

GRANTED.

13. Defendant's MIL 13: No Argument, Evidence or Questions regarding the Doctrine of Equivalents

GRANTED.

14. Defendant's MIL 14: No Argument, Evidence or Questions regarding, or otherwise referencing, any discussion among counsel or discussion before the Court during a bench conference or during any hearing outside the presence of the jury

GRANTED.

15. Defendant's MIL 15: No Argument, Evidence or Questions by CoC related to a patent examiner being an expert in the field

GRANTED.

16. Defendant's MIL 16: No Testimony from CoC's Damages Expert Salters

DENIED.


17. Defendant's MIL 17: No Testimony from CoC's Technical Expert Crouse

DENIED.

18. Defendant's MIL 18: No Argument, Evidence, or Questions That an Expert Has Consulted for or Worked with the Other Party or Its Employees

DENIED.

SIGNED this 8th day of November, 2021.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE